

STATE OF MICHIGAN  
COURT OF APPEALS

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JUDITH M. KAYE,

Plaintiff-Appellee,

v

ROBERT B. THORNTON,

Defendant-Appellant.

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UNPUBLISHED

May 20, 2003

No. 238880

Benzie Circuit Court

LC No. 01-006121-DO

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from the property settlement of a judgment of divorce. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In reviewing a dispositional ruling, this Court reviews the trial court's findings of fact for clear error and then decides whether the dispositional ruling was fair and equitable in light of the facts. The dispositional ruling will be affirmed unless this Court is left with the firm conviction that it was inequitable. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995).

"[A]ssets earned by a spouse during the marriage, whether they are received during the existence of the marriage or after the judgment of divorce, are properly considered part of the marital estate. Generally, marital assets are subject to division between the parties, but the parties' separate assets may not be invaded." *McNamara v Horner*, 249 Mich App 177, 183; 642 NW2d 385 (2002) (citations omitted). When the court is called upon to divide the marital estate, it must do so in a manner that is equitable in light of all the circumstances. Each party need not receive a mathematically equal share, but significant departures from equality must be clearly explained. *Byington v Byington*, 224 Mich App 103, 114-115; 568 NW2d 141 (1997); *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

Among the relevant factors to be considered in determining a property settlement are (1) the duration of the marriage, (2) contributions of the parties to the marital estate, (3) the parties' ages, (4) the parties' health, (5) the parties' life status, (6) the parties' necessities and circumstances, (7) the parties' earning ability, (8) the parties' past relations and conduct, i.e., fault, (9) general principles of equity, and (10) any other factors relevant to a particular case. *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992). Not every factor will be relevant in a given case. *Id.* at 159. "Hence, there is no rigid framework for applying the relevant factors. Nonetheless, where any of these factors are relevant to the value of the property

or to the needs of the parties, the trial court must make specific findings of fact regarding those factors.” *McNamara, supra* at 185-186 (citations omitted). The court need not assign equal weight to each relevant factor where the circumstances dictate otherwise, but it must not assign disproportionate weight to any one factor either. *Id.* at 186; *Byington, supra* at 115.

Defendant contends that the court erred in failing to consider the factors of health, life status, necessities and circumstances, and past relations and conduct. The parties presented no evidence regarding their health, necessities, or standard of living, and thus the trial court did not err in failing to address them. A review of the record shows that the trial court did consider the parties’ conduct and present circumstances as well as the short duration of the marriage, the assets and liabilities brought to the marriage, and the parties’ ages, employment and incomes, contributions to the marital estate and separation of their finances. The court’s findings did not place disproportionate weight on any one factor and its findings were clearly supported by the evidence.

Defendant also takes exception to the fact that the trial court did not award him a portion of the increase in value of plaintiff’s pension and investment accounts.

The trial court did not err in excluding plaintiff’s investment accounts from the marital estate. Plaintiff brought the accounts to the marriage and the passive increase in their value during the marriage was not an asset subject to division. *McNamara, supra*, 249 Mich App at 184; *Reeves v Reeves*, 226 Mich App 490, 496-497; 575 NW2d 1 (1997).

Plaintiff brought a pension to the marriage, during the term of which it increased in value by \$62,331. Vested pension benefits accrued during the marriage are part of the marital estate. MCL 552.18(1). However, that does not mean that they must be apportioned between the parties. *Bone v Bone*, 148 Mich App 834, 839; 385 NW2d 706 (1986). The disposition of the pension benefits must simply be equitable in the context of the entire marital estate. *McNamara, supra* at 188. Both parties worked during the marriage. Plaintiff paid the fixed expenses of the marital home and invested in her pension. Defendant apparently did not save for retirement and spent what he earned, turning to plaintiff for additional funds. He borrowed nearly \$30,000 during the course of the marriage and still owed \$15,000 when the parties separated after three years of marriage. Plaintiff retired during the marriage whereas defendant was still employed. Defendant left plaintiff after a minor argument and lived with another woman. Although he brought no substantial assets to the marriage, he left with over \$38,000 in cash and personalty acquired during the marriage and no debt. Under the circumstances, the trial court’s disposition of plaintiff’s pension benefits was not inequitable.

Affirmed.

/s/ William C. Whitbeck  
/s/ Helene N. White  
/s/ Pat M. Donofrio